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FILED
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41Q-0023-I-2023
Weisz, Madeleine
4.00

MONTANA WATER COURT, UPPER MISSOURI DIVISION
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q
INTERLOCUTORY DECREE

CLAIMANT: Northwestern Energy

CASE 41Q-0023-I-2023

41Q 30138177
41Q 30138179
41Q 30138181
41Q 30138183
41Q 30138184
41Q 30138187
41Q 30138190

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. This Case involves claims owned by NorthWestern Energy for domestic use at Ryan Dam. The claims appeared in the 41Q Interlocutory Decree issued September 30, 2021 with DNRC issue remarks.

2. On March 8, 2023, the claimant filed a Motion for Summary Judgment in response to a filing deadline to resolve the issue remarks. The motion asserts that the issue remarks appearing on the claims should be removed as a matter of law.

3. The water rights in this case claim a priority date of December 6, 1912. The DNRC placed an issue remark on each of the claims concerning the priority date. The remarks state that the claimed priority date may be questionable based on the claimant's responses to domestic questionnaires.

4. The seven claims all share the same source, "Spring, Unnamed Tributary of Missouri River, also known as Ryan Spring," and the same point of diversion in the NWNENE of Section 20, T21N, R5E. The places of use for each water right vary from claim to claim.

5. The priority date issue remarks were placed on the claims because the DNRC examiner sought additional information about which building each domestic use served and when that particular building was constructed.

The water rights do not claim the date the buildings were constructed, but rather when the water right was first put to use, which was prior to the buildings being built. In support of the claimed priority dates, NorthWestern attached newspaper articles from the Great Falls Daily Tribune dated December 18, 1912 and August 11, 1915.

The articles provide:

- The Construction of the Dam began December 6, 1912, but preliminary work had begun earlier.
- As of December 18, 1912, fifty men were employed on the project.
- There were up to 550 men employed by August 11, 1915.

This evidence supports the claimed priority date of December 6, 1912, which has prima facie status.

The date of the construction of particular buildings at the Dam is immaterial. A workforce of 50-550 men would clearly require a domestic water source prior to buildings being constructed.

The issue remarks appearing on the claims concerning priority date do not overcome the prima facie status of the claims and should be removed from the abstracts.

6. Claim 41Q 30138179 received an additional issue remark stating:

THIS CLAIM DOES NOT APPEAR TO MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2-222(1), MCA.

The issue remark appears to have been added to the claim because the water is used at the Ryan Dam “Powerhouse” and the DNRC claim examiner interpreted this use as a commercial use. The claimant explains that claim 41Q 30138179 is for domestic use in the office, bathroom, and sleeping room at the Ryan Dam Powerhouse and that there is no commercial use of this water right. The Ryan Springs water at the Powerhouse is not sold, run through the Powerhouse generators, or in any way used to produce something commercially sold.

The issue remark appearing on claim 41Q 30138179 does not overcome the prima facie status it is entitled to. The issue remark should be removed from the claim abstract.

7. Each of the claims in this case received a notice issue remark stating that the claim was not included in the previous decree issued for Basin 41Q. The necessary notice has been provided and the issue remark should be removed from the claims.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it

existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provides a sufficient basis to do so. § 85-2-248(3), MCA.

3. The requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. If it meets this standard, then the burden of proof shifts to the claimant to prove his or her claim's validity. An issue remark is weighed like any other evidence. When an issue remark is placed on a claim, "the information resulting in the issue remark and the issue remark *must be weighed against* the claimed water right." § 85-2-247(2), MCA (emphasis added). The Water Court shall review an issue remark "to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error." § 85-2-248(3), MCA. Determining whether the factual issues raised by an issue remark have been resolved requires the exercise of judicial discretion.

Id.

4. The issue remarks appearing on the claims in this case do not overcome the prima facie status of the claims.

RECOMMENDATION

1. The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30138177 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: NORTHWESTERN ENERGY
208 NORTH MONTANA SUITE 205
HELENA, MT 59601

Priority Date: DECEMBER 6, 1912

Type of Historical Right: USE

Purpose (use): MULTIPLE DOMESTIC

Flow Rate: 35.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MISSOURI RIVER

Source Type: GROUNDWATER

ALSO KNOWN AS RYAN SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NWNENE	20	21N	5E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		2	NENWNE	20	21N	5E	CASCADE

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30138179 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: NORTHWESTERN ENERGY
208 NORTH MONTANA SUITE 205
HELENA, MT 59601

Priority Date: DECEMBER 6, 1912

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MISSOURI RIVER

Source Type: GROUNDWATER

ALSO KNOWN AS RYAN SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NWNENE	20	21N	5E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		2	NESESW	17	21N	5E	CASCADE

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30138181 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: NORTHWESTERN ENERGY
208 NORTH MONTANA SUITE 205
HELENA, MT 59601

Priority Date: DECEMBER 6, 1912

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MISSOURI RIVER

Source Type: GROUNDWATER

ALSO KNOWN AS RYAN SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NWNENE	20	21N	5E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		1	NENENE	20	21N	5E	CASCADE

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30138183 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: NORTHWESTERN ENERGY
208 NORTH MONTANA SUITE 205
HELENA, MT 59601

Priority Date: DECEMBER 6, 1912

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MISSOURI RIVER

Source Type: GROUNDWATER

ALSO KNOWN AS RYAN SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NWNENE	20	21N	5E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		1	NENENE	20	21N	5E	CASCADE

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30138184 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: NORTHWESTERN ENERGY
208 NORTH MONTANA SUITE 205
HELENA, MT 59601

Priority Date: DECEMBER 6, 1912

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MISSOURI RIVER

Source Type: GROUNDWATER

ALSO KNOWN AS RYAN SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NWNENE	20	21N	5E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		1	NENENE	20	21N	5E	CASCADE

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30138187 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: NORTHWESTERN ENERGY
208 NORTH MONTANA SUITE 205
HELENA, MT 59601

Priority Date: DECEMBER 6, 1912

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MISSOURI RIVER

Source Type: GROUNDWATER

ALSO KNOWN AS RYAN SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NWNENE	20	21N	5E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		1	NENENE	20	21N	5E	CASCADE

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30138190 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: NORTHWESTERN ENERGY
208 NORTH MONTANA SUITE 205
HELENA, MT 59601

Priority Date: DECEMBER 6, 1912

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF MISSOURI RIVER

Source Type: GROUNDWATER

ALSO KNOWN AS RYAN SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NWNENE	20	21N	5E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		1	NENENE	20	21N	5E	CASCADE